

INTERGOVERNMENTAL RELATIONS AND PROVINCIAL GOVERNMENT: FOSTERING MUTUAL CO-OPERATION

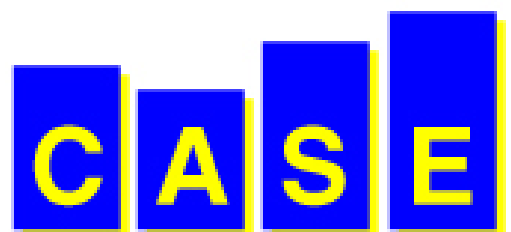
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INTRODUCTION

The Department of Constitutional Development commissioned the Community Agency for Social Enquiry (C A S E) to record and summarise the proceedings of a conference on “Intergovernmental Relations and Provincial Government: Fostering Mutual Co-operation” that took place 29-30 March 1999, and produce an analytical report based on the proceedings. The report seeks to summarise the main issues that emerged from the conference, put them in the context of on-going discussion on Intergovernmental relations (IGR), and suggest ways of moving forward to deal with these issues. Because the conference was conceived of as an opportunity to take stock of the experience of IGR and prepare for the period after the 1999 elections, some of the proposals made here may be controversial. The reason for that is the need to begin to explore new options and promote discussion that does not always stick to conventions.

PART I: ANALYTICAL REPORT

The Context

Taking place towards the end of term of the parliament that was elected in 1994, the conference provided a good opportunity to evaluate the record of IGR over the preceding five years, and gauge the perspectives of different players in the field. These include national and provincial governments, MECs in the provinces, local government representatives, the National Council of the Provinces (NCOP), academics and other interested parties.

The basis for discussion was the Constitution of the Republic of South Africa, 1996, and in particular Chapter 3 on co-operative government. The basic principle contained in section 40 (1) of the Constitution is that “government is constituted as national, provincial and local spheres of government which are distinctive, interdependent and interrelated”. In section 41 (2) the Constitution also mandates an Act of Parliament “to establish or provide for structures and institutions to promote and facilitate intergovernmental relations”, and provide for “mechanisms and procedures to facilitate settlement of intergovernmental disputes”.

Schedules 4 and 5 of the Constitution respectively specify the functional areas of concurrent national and provincial legislative competence and the functional areas of exclusive provincial legislative competence. The precise mechanisms to be used to co-ordinate between national and provincial spheres and the procedures for dealing with disputes stemming from different interpretations of these areas of competence are not specified in the Constitution.

Against this background, since the adoption of the Constitution in 1996 (and even before that since the 1994 elections), intergovernmental relations developed in a manner that frequently was not formalised by legislation. Structures to deal with relations between the different spheres of government developed on the basis of need and were modified to fit changing circumstances.

The meaning of provisions about the respective powers of spheres emerged in practice through a process of negotiation and contest between national and provincial spheres.

Given the incremental nature of the process and the absence of restrictive legislation to guide it there have been calls to formalise it and pass legislation to establish institutions and put in place clear mechanisms to handle IGR. To be able to decide whether this is necessary, a review of the record so far and of the issues that remain unresolved is needed. This paper seeks to contribute to this process.

Unity in Diversity

Unity in diversity has been a guiding principle of the new South Africa in many areas, including the system of government. It reflects recognition that the country is diverse in terms of race, ethnicity, culture, religion and region and at the same time enjoys a common history and destiny beyond these divisions. In the area of government institutions it reflects a compromise between unitary and federal principles of governance. This compromise was forged in the course of constitutional negotiation prior to the 1994 elections and it remains in force today without any serious challenge.

As an arrangement that has its origins in a political compromise, however, unity in diversity is open at times to different interpretations as a result of vague formulation of its components. This is apparent in disagreements over the implementation of this concept. How much diversity can be allowed within the boundaries of unity, and to what extent can unity be maintained without constraining diversity, are questions that do not have fixed answers – they have been settled in practice on the basis of power relations.

Two main types of complaints about the actual state of affairs have emerged. There are those who believe that the provinces either have been deviating from national policies and thus subverting unity. Alternatively provinces are seen to be duplicating national legislative efforts and institutional arrangements, and thus result in a waste of resources and a delay in delivery. At the same time, others claim that centralist tendencies prevail in national government and lead to provincial powers being ignored or bypassed.

More common than these two responses which tend to look at national and provincial powers as being mutually exclusive, are calls for clarifying the division between national and provincial powers, and rationalising the structure of IGR. These calls focus on finding an effective way to combine national co-ordination and optimal use of resources on the one hand, with provincial initiative and easier access for people on the ground on the other.

Since the Constitution will not change in a way that would settle these matters once and for all, we can expect on-going tensions over the issue. There is need for a policy to incorporate the strengths of the different spheres without diminishing their powers. There is no need for ten different policies, one national and one for each of the nine provinces. This is a costly and time-

consuming exercise. However, there is need to accommodate provincial variations. In other words, one national policy should be implemented in a flexible manner to allow consideration of local peculiarities and constraints.

This point is important when we realise that in many areas, such as health, education, housing, etc. policy is decided at the national level but is implemented by the provinces. There is no point in formulating uniform national policies only to face problems when they are being implemented provincially. Provincial inputs and concerns should be incorporated from the beginning of the national process and not as an afterthought. If the conditions in some of the provinces are such that the national policy cannot be applied there without significant changes, this issue must be anticipated and tackled before the policy is finalised to prevent exhausting and futile conflict.

While unity of policy is an important principle, it must not be interpreted as uniformity in all respects of implementation but rather as a broad framework, which allows for different modes of application. The focus should be on policy principles and objectives (such as participation, equity, development, etc.) rather than on the technical mechanisms required in order to achieve these goals. Much of the discontent of some provinces arises not from a desire to challenge policy objectives as such, but from what they see as a tendency to prescribe particular ways of realising objectives. More flexibility on the part of the national sphere would help in reducing tensions on this basis. Ends and means must not be confused.

It is possible that if provinces are given more freedom to find their own mechanisms to implement national policies, they will come up with creative methods of achieving agreed-upon goals. If these methods achieve results that are equivalent to or better than the results reached through the use of nationally prescribed methods, their methods may be sanctioned and even adopted by other provinces. In this way creativity and initiative arising from the need to deal with local circumstances and find appropriate solutions to concrete problems will be released.

If certain provinces feel comfortable in following national prescriptions they have the right to do so, of course. If the provinces follow their own methods and the results are poor they can change their course. Only if provinces refuse to change their methods, despite clear evidence that they are not meeting their goals, can the national sphere exercise the right to override provincial powers. This will be a measure of the last resort, however.

The insistence in some circles of national government on giving more powers to the national sphere and less autonomy to the province stems from the legacy of apartheid, which used arguments about self-determination, autonomy and differentiation to legitimise policies of racial discrimination and uneven development. Times have changed, however, and there is little to fear from greater experimentation by provinces in finding innovative method of reaching desirable goals, or moving at a somewhat different pace from each other.

What are the advantages of provincial autonomy in the area of implementation? This approach ensures that provinces take greater responsibility for their own performance. They cannot blame national government for blocking their initiative, ignoring their circumstances or imposing unrealistic deadlines. If they can implement policies at a faster rate or more efficiently they will be rewarded by being able to release resources to other programmes according to their own priorities. At the same time they also free up national resources by not forcing government to police them to ensure they meet their goals. On the other hand, if they under-perform and national government is forced to intervene, through supervision or by investing additional resources, they should bear the cost of such intervention. In this way efficiency and prompt delivery will be encouraged, poor performance penalised, and national government be made free to focus on the task of oversight, policy making and giving overall direction.

The second advantage of this approach is that it establishes clear boundaries between the responsibilities of spheres, at the same time that it retains their interdependency. The blurring of boundaries and allocation of parallel powers is a constant source of tension because it is never fully clear where credit is due and where blame should be apportioned. It is also problematic in that it makes it difficult to draw clear lessons about the performance of each province, how it should be improved and what system of incentives can be used to enhance performance.

All this must be done while taking care not to punish the residents of a province for the incompetence of its government. In other words, the basic levels of services must be maintained, though national intervention if necessary.

Capacity and Uneven Development

A concern that has been raised consistently about the provinces is their record of performance and delivery since 1994, as well as issues of corruption, waste and mismanagement that seem to afflict them. It can be pointed out in response to this that problems with capacity are not unique to the provinces, and are common to national and local governments as well. Given that in many areas such as health and education national government is not the main implementing agency, but rather is in charge of designing overall policies and maintaining norms and standards, it is impossible to compare the extent of capacity at these two spheres, as their tasks are different.

If national government or any department within it were to assume the task of running a province or provincial department they would not have the capacity to do so. This is because they are not geared for such tasks. Their role is to facilitate implementation and service delivery by the provinces. Given that provincial capacities are based to a large extent on the varying legacies of apartheid and historical patterns of racial segregation and inequality, it is important to make sure that a new system of performance evaluation and incentives not serve to deepen gaps between provinces.

This is a real problem as the best performing provinces tend to be those which enjoy greater prosperity (such as Gauteng and the Western Cape in many areas). Provinces that perform poorly

tend to be those that were disadvantaged before and are still suffering the consequences of the 'homelands' policies (Eastern Cape and Northern Province among others). There is thus little sense in talking about provincial capacity in general. Rather we need to find ways of increasing the capacity of under performing and under-resourced provinces, through assistance provided by national government as well by better-resourced provinces.

Currently all provinces are expected to perform at the same level, operating through similar structures. Given that starting points (financial, administrative, and personnel resource bases) are different this is unrealistic. To expect of government at provincial and local levels to perform to standards without equipping them for the task is to place an unreasonable burden on them. A capacity building programme must be put in place.

Standards need to be stated clearly and adhered to, taking into account financial, human and organisational constraints. In addition mechanisms for redress and accountability should be created. A performance management system based on clear identification of goals, capacity, budget and planning is essential. It cannot be created, though, without a specific budgetary allocation and a monitoring and evaluation system. This is an expensive undertaking and it requires skilled personnel to operate it.

The Department of Constitutional Development together with the Department of Public Service and Administration must jointly take the initiative to evaluate needs, design training programmes and implement them in all spheres of government. In the absence of commitment to invest in capacity building, the gap between the less and more endowed provinces will widen.

Vertical and Horizontal Relations

One aspect of IGR that could add another dimension to issues of capacity as well as other issues, but has not been tackled directly by the formal provisions of the Constitution, is the issue of vertical relations between provinces. The IGR system has relations between different spheres at its core, but not relations between different elements in the same sphere.

Calls have been made in the conference by a number of provincial leaders to develop inter-provincial relations and forums that do not have to include all the provinces at the same time, or to involve the national sphere. Such forums can deal with problems that involve relations between provinces with common boundaries or common concerns, such as taxi violence along certain routes, spread of HIV/AIDS, rivers, nature conservation, etc. The idea behind this is that there is no need to involve the Western Cape for example in discussions of violence along transport routes between Gauteng, Free State and KwaZulu-Natal. There may be some issues that can be soled in these more limited forums without involving national government and all IGR structures.

Another use of such forums, as suggested by some provincial representatives, is that they could bring together provinces with different resource and capacity levels (or perhaps with

complementary resources) to help each other and collaborate on specific projects. While the national sphere could contribute to these processes as well, it is more efficient if progress can be made without necessarily involving all spheres to manage all issues.

This approach might be opposed as privileging relationships between some provinces and not others, thereby creating ‘cliques’, and allowing the better-endowed provinces to dominate their less fortunate colleagues. These may lead to the marginalisation of the national sphere as mechanism for co-ordinating and equalising relations between provinces. These concerns must be taken seriously. At the same time, experiments with different arrangements can open up new avenues for co-operation and development that have not been tried before. If they turn out to be successful they should be encouraged; if they cause problems in the relations between spheres they could be blocked. Either way there is room for initiative and creative experimentation of this nature.

To ensure that such experiments do not get out of hand, the Departments of Constitutional Development and of Finance must play a role in monitoring these inter-provincial matters. This will guarantee that all players share the same broad policy basis, to prevent duplications and a waste of resources. The role of national departments would be facilitative, focusing on how the need to enable the provinces to co-ordinate their efforts. This should be accompanied by co-ordination between local and provincial spheres of government.

Cross-border partnerships

Another issue that was raised in the conference is cross-border partnerships – the relations between provinces and neighbouring countries. Obviously, provinces do not have power to intervene in foreign affairs, and IGR structures do not deal with these at present. However, there are matters that may involve co-operation with other countries – for example Free State and Lesotho, North-West and Botswana, Mpumalanga and Mozambique. This will serve to deal with issues such as nature conservation (trans-frontier parks), transport and development links (Maputo Development Corridor), and health problems (malaria eradication, HIV/AIDS).

The issues mentioned above affect people across national boundaries and they should be treated on an integrated basis through joint planning. There is also the general issue of delivering services to people from neighbouring countries, which must be dealt with in a systematic manner. A range of other issues that cannot be solved at the level of an individual province – policy regarding traditional leaders, crime, international syndicates – could be better handled through sharing knowledge and experience between provinces and local governments, as well as neighbouring countries.

Arrangements to pool resources, reduce waste and learn from each other should be put in place. In all the cases mentioned above there is a need to enable co-operation beyond provincial and even national boundaries. The current IGR structures are not flexible enough to facilitate such co-operation and new ways should be found. They must involve oversight by the Department of

Foreign Affairs and the relevant national departments, but they may be led by provincial initiative, if the provinces in question are willing and able to do so. There is little danger that national sovereignty will suffer as a result.

MINMECs

Although many provincial delegates at the conference were eager to explore new partnerships and institutional arrangements that go beyond the existing boundaries, one arrangement that was not considered favourably by them is the MINMECs. Perhaps more than any other issue, the MINMECs were received critically by representatives of the provinces as well as the National Council of Provinces.

At stake is the issue of provincial powers and the extent to which the operation of the MINMECs overrides the powers of the provincial legislature and executive to determine policy. Through meetings between national departments and relevant MECs from the provinces, the MINMECs provide an alternative channel for policy making to the established provincial channels.

In principle provincial policy is determined by the executive, headed by the Premier. The MECs are bound by decisions taken at that forum, as well as by the deliberations of the provincial legislature. In practice, however, when a national minister and provincial MECs agree on policy issues at the MINMEC, this can result in pre-empting the work of the provincial legislature. In addition, the provincial executive may be faced with the need to implement policy without always having approved it and allocated the necessary funds for it.

The problem in this arrangement is that there is no integration between the legislative and executive processes, and between the two parallel policy-making processes. Some delegates pointed out that MECs are answerable simultaneously to their provincial structures and to the national minister. Whether the provincial sphere is indeed accountable to the national sphere is debatable, and there is no constitutional provision for this principle or indeed for the MINMECs.

The potential for conflict here is real, and it can be solved only by establishing clear lines of communication and accountability. The MINMECs are important as forums for exchange of ideas, debate and moving forward in creative ways, but they should not be used to bypass provincial processes. MECs should get a mandate from the provincial executive to present positions at MINMECs. If they deviate from their mandate they should go back to their principals and get approval for that.

The NCOP

Another question to be addressed is the role of the National Council of the Provinces (NCOP). The NCOP plays a role in reducing the gap between the legislative process and the public by encouraging debates in various parts of the country, and by giving the provinces institutional means to voice their concerns. The precise location of the NCOP in the legislative process may be problematic, however. Consultation with the provinces should take place in the course of

formulating legislation by the relevant departments before they submit bills to parliament, and the NCOP should not duplicate the process.

Concern has been raised that by the time a bill comes before the NCOP, it had already gone through various sages of formulation and revision, and reached a degree of finality. The NCOP can do little at that stage to reverse the process or send the bill back to the drawing board. If the NCOP is not to become a rubber stamp for legislation that has passed through other bodies, it must be involved in the process from its inception, and play a role in initial provincial consultations.

The NCOP can also play a role in brining all spheres of government together. It accommodates the voice of local government, which must have a voice in provincial legislatures as well. Both local and provincial governments should have structured mechanisms for making their input into the NCOP through the provincial legislatures. While the NCOP provides an institutional foundation for implementing co-operative government, its role and capacity must be strengthened if it is to play a more meaningful role.

Intergovernmental Fiscal Relations

The system of IGR fiscal relations seems to be working fine and was generally praised. One issue that remains to be solved is unfunded mandates, which result from lack of co-ordination between different spheres with concurrent powers over areas such as health and education. Better co-ordination between MINMECs and the provincial structures would help in dealing with this problem. The problem of capacity – people's ability to understand the technical language used in financial discussions – can be solved through proper training programmes in financial management.

Legislation or Organic Development

In most of the issues discussed in the conference the general feeling was that practical solutions must be found without creating a restrictive legislative framework. This can be done by adopting rules to regulate relations between spheres of government, and allowing them to change when circumstances require that. It is better to let relations develop organically and there is no need to rush to finalise matters at this stage.

PART II: PROCEEDINGS

FIRST SESSION, 29/3/1999

The conference opened on the 29th March with greetings from Mr Mahlangu, the Mayor of Kayalami Local Council, who welcomed the delegates in the name of the council.

Deputy president Mbeki, keynote address

The Deputy President gave the keynote address of the conference. He emphasised that although delegates represented diverse national, provincial and local constituencies they were all united as South Africans. Differentiation within this unity is important and there is a need for mutual co-operation to reconstruct and develop the country, guided by the spirit of the Constitution.

The Constitution provides the framework for Inter-Governmental Relations (IGR) by allocating exclusive and concurrent powers to the three spheres of government. The guiding principle is the need to maintain overall unity through co-operative governance and partnership between the different spheres. There is a need to develop a culture to facilitate alignment and co-ordination between these spheres, so that narrow parochial boundaries can be overcome and needs be addressed on a coherent integrated basis.

South Africa needs to learn from international experiences and recent practical challenges, and use them to meet the needs of the country. The IGR system must be seen in the context of social, political and economic realities. The institutional and legislative framework should serve to guide developments, not to control them. To allow it to play this role there is need to co-ordinate spheres effectively, develop performance mechanisms for IGR, make the role of the local sphere meaningful and establish procedures for settling disputes.

It is time to review the performance of provinces since 1994. On the one hand, there are serious concerns about their capacity, and about issues of corruption, waste and mismanagement. On the other hand, provinces are closer and more accessible to people on the ground. To improve performance there is thus a need to address corruption, reduce cost, increase quality and deliver services. To enhance government's capacity to deliver, co-operation is essential.

After the election government should be able to put forward proposals on how to minimise wastage and duplication of resources and remove blockages that prevent delivery. This will be done in the framework of a developmental state that is committed to public participation and people-driven transformation.

Minister Moosa, Department of Constitutional Development, opening presentation

Minister Moosa asserted that after the 1999 elections, government would adopt a new policy on IGR institutional mechanisms. This policy will address the structure and role of the Inter-Governmental Forum (IGF), which has grown organically without prescription or legislation, develop conflict resolution mechanisms, and address other relevant issues.

Among the issues to be addressed is the difference between local and provincial spheres of government. Local governments operate through a national association, but their provincial counterparts do not speak with a collective voice (the Premiers' Forum does not play that role). There is a gap between the local sphere on the one hand and provincial and national spheres on the other. The latter work on similar issues, while the competencies and roles of local government are different.

Another question to be addressed is the role of the National Council of the Provinces (NCOP). The NCOP can play a role in reducing the gap between the legislative process and the public by encouraging debates in various parts of the country. However, the NCOP is duplicating the process of consultation with the provinces, which is already carried out by government department before they submit bills to parliament.

Handling IGR can be done without creating a restrictive legislative framework, by adopting rules and developing comprehensive proposals to regulate these relations. It is better to let relations develop organically and there is no need to rush to finalise matters at this stage.

Premier Phosa, Mpumalanga, “co-operative governance and the provinces”

The IGR system is young. It has been in existence for five years and was restructured out of various bodies and divisions that existed before 1994. New structures have been created: the IGF, which is in charge of synergy between policies, the Premiers' Forum, and the MINMECs, which are specific to each area. In addition to these comprehensive forums, there is need to bring together on a specific basis provinces that are facing similar issues and provinces that wish to address inter-provincial matters, such as rivers.

The Departments of Constitutional Development and of Finance must get involved in these inter-provincial matters as well. All players in the field should work from the same policy basis, so as to prevent duplications and waste of resources. This would allow synergy between planning and budgeting, ensure budget discipline, and facilitate strategies to spend on capital projects rather than on personnel. The focus should be on operational mechanisms, co-ordination between spheres, synergy of policies, and public-private partnerships in service delivery supported by NGOs and international organisations.

A system of co-operative governance is crucial to enable delivery, which should happen at the level closest to people. Co-ordination between local and provincial spheres of government is thus

essential, and local government should be represented at all levels. The involvement of civil society and grassroots structures is important as well, as they can assist in delivery through funding by the private sector and international donors. Provinces can contribute to relations with neighbouring countries through initiatives such as the Maputo Development Corridor.

The principle behind these examples of co-operation is the need to create innovative arrangements to facilitate reconstruction and development, transform policies and institutions and put in place effective delivery mechanisms. We must go beyond formal institutional boundaries to focus on the tasks and use all available resources, on the basis of shared interests.

There are questions that must be addressed in the framework of current IGR, such as the role of MINMECs, which override the decision of provincial legislatures and their role vis-à-vis provincial structures is unclear. Practical arrangement need not be legislated, and the focus should be on testing and developing them, without a restrictive formal framework.

Ms Dube, SALGA, “co-operative governance and local government”

Spheres of government are interdependent within a national framework, and inter-governmental structures give effect to the notion of co-operative governance. These structures must co-ordinate and align policies and efforts. These can be done through the NCOP, which needs vertical and horizontal links with other national, provincial and local structures.

In some provinces initiatives are underway to co-ordinate efforts with local government, but they are not consistent and a framework is needed to regulate these matters. The provinces must help local governments, not undermine them, through building their capacity and developing financing mechanisms.

The inter-governmental grants to local governments must be looked at to allow it to play a social and developmental role. This can be done through overhauling municipal finances, and putting in place new mechanisms that would give local government its equitable share and enable it to meet its tasks. The private sector should contribute to this as well.

So far the experience of IGR has been good and a solid foundation to build upon has been created. However, the success of the system requires a flow of information that will feed into policy. A solution must be found to the problem of unfunded mandates, which leave local government with no money and no capacity to perform its functions.

Mr Lekota, Chairperson of the NCOP, “the national council of provinces”

The NCOP is the collective voice of the provinces. It forms part of a new culture of consultation, co-operation and mutual assistance. The notion of co-operative governance provides a conceptual foundation and the NCOP an institutional foundation for meeting the challenge of

implementing ‘unity in diversity’. It is the only institution that brings together all spheres of government.

The NCOP is a process, which can be seen either as a house of provinces that gives them a voice or as a mechanism that brings them into national processes. In fact it is both: it links different spheres by expressing provincial interests and concerns and providing a forum in which the provinces can discuss issues of relevance to them when deciding on national policy. The operation of MINMECs is problematic in this context, however.

Provincial inputs on national legislation should be made through the provincial legislature, which confers a mandate on delegates to the NCOP, but provincial MECs frequently do not work through this channel. Rather they work through MINMECs, which are executive structures. In this way, there is no integration between the legislative and executive processes. Executives in the provinces should engage with their own legislatures.

The NCOP should play a role in inter-governmental fiscal relations – provinces must have a say in deciding on how to divide their budget allocation, and the possibility of them raising their own funds should be explored. Other tasks of the NCOP relate to intervention in the provinces and municipalities when serious problem occur, dispute resolution and oversight of IGR. SALGA plays a role in the NCOP, and must have a voice in provincial legislatures as well. Organised local government should have a channel to the NCOP through the legislatures, and some of them, such as Gauteng, have arranged for that already.

The NCOP has not done much in many of these areas due to its limited capacity and lack of experienced personnel. After the elections the NCOP must pursue these duties. It is an integral part of IGR, and has a clear role in the legislative process, which should be understood by its own members and other structures, and implemented accordingly.

Premier Matsepe-Casaburri, Free State, “the role of IGR components in the provinces”

There is no blueprint for IGR, except for the overall constitutional provision for three distinctive, interdependent and interrelated spheres of government, and the principles of national unity and co-operative governance. In practice formal and informal processes operate, such as the MINMECs, which cut across formal provincial boundaries.

In the provinces there is no effective co-ordination of IGR. The situation is fragmented, and the input of local government into provincial affairs is done in an ad-hoc manner. The MINMECs do not have a clear mandate and their input should be incorporated in a co-ordinated manner. Similarly there should be structured mechanisms for provincial input into the NCOP. The role of provinces in national bargaining chambers must be clarified as well.

It is important to have mechanisms of co-ordination between provincial and local spheres in issues such as spatial planning. Local government must be capacitated to allow its input to be made. The same is true for grassroots structures. There can be no participatory democracy if people are not able to articulate their concerns, and work in a way that is not affected by bureaucratic and hierarchical structures that block access and hamper delivery.

New mechanisms are needed to deal with issues that are not handled by IGR structures at present. These involve co-operation with other countries (for example Free State and Lesotho, North-West and Botswana), to solve problems that affect all of them on an integrated basis and call for joint planning, such as taxi violence and HIV/AIDS. The general issue of delivering services to people from neighbouring countries must be dealt with as well in these forums. A range of issue that cannot be solved at the level of an individual province – policy regarding traditional leaders, crime, international syndicates – would be better handled through sharing knowledge and experience between provinces and local governments. Arrangements to pool resources, reduce waste and learn from each other should be put in place.

Discussion

Following the morning session, a discussion of the presentations took place from the floor, chaired by Rev. Frank Chikane. The main issues raised in the discussion are presented below.

Unity and diversity

One thread in the discussion addressed the need to balance between national policy and local and provincial implementation. The question of how to synchronise policy priorities at sub-national level, given that priorities are by definition local and specific, came up in this context. It was argued that local governments must consult and co-operate with each other but without following uniform priorities, and that provincial legislatures are not sub-units of the national parliament but autonomous entities.

Mr Peter Miller from KwaZulu-Natal raised a similar point related to the provincial sphere. He argued that co-operative governance means working together without imposition from above. Provinces are separate political entities and not merely administrative units. There should be room for different policies in provinces based on their different circumstances. Otherwise the notion of provincial powers become meaningless. Mr Pieter Marais from the Western Cape reinforced this point, by calling for protecting the powers of the provinces. Inter-governmental relations must be built on principles on consensus, not majority control, and policy must allow for provincial differences to be expressed.

MEC Jabu Moleketi of Gauteng argued in response that there is no need for ten different policies, but rather for one national policy that is flexible in its implementation due to local peculiarities and constraints. Flexibility should not be carried too far as to result in completely different direction though.

Local government and the provinces

Another thread in the discussion that received great attention was the relation between local government and the provinces. MECs from some of the provinces rejected the notion that representatives of local government should physically sit in provincial legislatures as not being provided for by the constitution, though they acknowledged the need for a channel to allow them to voice their concerns.

A representative of SALGA Mr Mokoena maintained that local government should participate at provincial legislature meetings when matters affecting them are discussed. sli

Several participants emphasised the need for integrated development planning and service delivery that would allow co-ordination between local and provincial efforts, possibly through the creation of national and provincial offices at local level.

Provinces and the NCOP

The NCOP was criticised by MEC Miller from KwaZulu-Natal as not being a meaningful forum for the provinces. While it is good in theory, by the time it gets to discuss a bill from the perspective of the provinces, it is too late to change much. The NCOP should intervene early on, not at the end of the legislative process. This point was countered by Jacob Zuma from KwaZulu-Natal, who argued that debates at the NCOP can make a difference, but more time should be allowed for debate to make its input meaningful.

A representative of the NCOP argued that provinces could intervene in early stages of debates on legislation and not wait for it to reach the NCOP. At the same time, the NCOP was criticised by others as being ineffectual and removed from concrete concerns such as the impact of legislation on budgets, implementation and delivery.

Premier Motshekga of Gauteng asserted that MECs must participate in the provincial legislatures to inform them and help shape the mandate for the NCOP. Naledi Pandor of the NCOP called similarly for the provinces to make their input and ensure that their representatives convey these through the MINMECs, the NCOP and the national assembly.

The extent to which the NCOP functions as a second house of parliament rather than as the voice of the provinces was questioned. One response was that the NCOP works through provincial mandates and it was up to the provinces to make use of the opportunity presented by it.

MINMECs

The issue of MINMECs proved to be particularly problematic. In principle MECs are answerable to the Premier and to the provincial legislature. However, the MEC for public works in the Northern Province Mr Chabane pointed out that there are issues in which MECs are answerable to the national minister in their area, and this makes matters more complicated.

Representatives of the NCOP argued that MECs should brief provincial legislatures about the MINMEC process, to allow them to participate in the policy debate. The MINMECs should not be used to bypass the NCOP process. Premier Mothsekga referred to this as two parallel policy-making processes, that must be integrated to be efficient.

MEC Moleketi pointed out though that MINMECs are important as forums for exchange of ideas, debate and moving forward in creative ways

Interventions

Peter Miller of KwaZulu-Natal that section 139 of the constitution, which governs the intervention of a province in a local government, is not workable, as it is too cumbersome in its procedures. Mr Mokoena of SALGA countered by saying that the section reflects the spirit of co-operative governance, and it protects the sphere of local government. It should encourage provincial government to support local government through the provision of financial assistance but also through provision of technical skills and human resource capacity.

General issues

A need was expressed for forums to discuss issues that cut across departments, such as water, that involves in addition to water, questions of sanitation, health, agriculture, etc, which fall under different departments.

A point about capacity that was made by a number of participants, in response to criticisms of the provinces by national representatives was that lack of capacity affects all spheres of government, not just provincial and local government but the national government as well.

The session was concluded by Rev. Chikane, who argued that most of discussion reflected issues related to implementation rather than to principle.

SECOND SESSION, 29/3/1999

Professor Levy, “policy on intergovernmental relations”

The legacy of IGR under the previous regime does not provide much to build on. That is why there is a need for an IGR audit. The audit will give a precise picture of the state of IGR at present, how institutions work in practice and how effective they are. On that basis we can move towards putting in place a viable system in line with the constitution.

The crucial areas that need to be studied include the operation and structures of IGR institutions; the strategic role and potential of IGR institutions; operational linkages; inter-sectoral relations;

dispute resolution mechanisms; the use of information technology to monitor performance. The audit will be carried out between March and December 1999, and will assess the interface between different spheres of government.

Among the issues to be examined is the role of the Inter-Governmental Forum which, although it is central to IGR and co-operative governance, cannot deal with all the issues arising in this context. Its relations to the NCOP are unclear. The role of the MINMECs should be clarified as well – are they consultative or decision-making structures.

Mr Momoniat, Fiscal and Financial Commission, “intergovernmental fiscal relations”

The principle of co-operative governance means an obligation of different spheres of government to work together, through consultation rather than litigation. It is important to realise in this context that the three spheres are governments rather than administration, and that they have exclusive as well as concurrent powers.

In the field of fiscal and financial relations, the constitution mandates a revenue-sharing programme, which gives each sphere of government its equitable share out of funds raised at the national level, and allows it to raise additional funds through taxation and other measures. Such funds account for 4% of the income of the provinces and 90% of local government income.

All funds are used to perform functions in relation to which spheres of government have exclusive and concurrent powers. Unfunded mandates result from lack of co-ordination between different spheres which have concurrent powers over certain areas such as health and education, and they should be avoided..

The new budget process is more decentralised. It involves longer-term planning through the Mid-Term Economic Framework (MTEF), and it discourages bailouts of one sphere by another. However, it relies on proper financial management, which does not always exist. Recent legislation such as the Public Financial Management Act aims to improve this situation.

Mr Morobe, Fiscal and Financial Commission, “intergovernmental fiscal relations”

There is need for efficiency, transparency and accountability, and a new culture of behaviour conforming to the constitutional principles. Since 1994 a process of transformation has been put in place, based on strategies to deal with fiscal issues in the context of socio-economic realities, and the need to utilise resources efficiently and responsibly. The role of the FFC is to contribute through research and analysis to the task of distributing resources equitably in a way that empowers all stakeholders.

A review of the experience of IGR with a focus on finances would allow the new government to proceed with the task of putting in place equitable fiscal relations. We have to ask ourselves

whether it is efficient to have so many IGR forums in place, and whether people in these structures understand the technical language used in discussions. There is need for more transparency in the process.

Professor Espin, University of Castilla-La Mancha, “models for intergovernmental relations: Spain”

Intergovernmental relations in Spain consist primarily of relations between the central state and the regions or ‘Autonomous Communities’. Both central and regional governments may exercise powers concerning the same issues. There is no formal mechanism to ensure co-ordination between these spheres in the Senate, but voluntary techniques are used to achieve this goal, although not mandated by the constitution. The use of these practical mechanisms has led to the reduction of conflict.

While the Spanish federal system gives extensive powers to the regions, it retains the unity of a national judiciary, and recognises only administrative autonomy for provinces and municipalities. This means autonomy with regard to hiring, directing and supervising employees and the power to issue local ordinances, but no autonomy with regard to policy and legislation. In this latter respect they are subordinate to the central and regional governments.

Discussion

Following these presentations, a discussion session ensued. It consisted of inputs by a panel of discussants and from the floor, after which the presenters were given a chance to respond.

Professor Swartz, University of Fort Hare

The IGR audit would assess the structure and capacities of institutions against the constitutional provisions and government policy. There are critical capacity shortages that must be addressed, as well as other issues such as human resources and managerial capabilities, especially at provincial and local levels. Conflict between spheres is another important issue: it can be mediated and managed but not eliminated altogether.

The audit needs to look at power as a relational arrangement (not a zero-sum game), where the different components interrelate. Devolution and decentralisation have strategic implications: dispersed power means that more resources should be allocated to co-ordination to arrive at strategic cohesion. Government must be brought closer to the people through devolution of power, but without undermining the unity of the state.

Other important issues to look at are the need for symmetry under conditions of differential capacity of the components of each governmental sphere, and the pace of reform which should not be too fast so as to overtake the limited capacity of the system to absorb reform.

Professor Lawrence, University of Natal

The Spanish model can offer useful lessons from a comparative perspective. It is a move from a hierarchical to a devolved system, based on competence – what each sphere can do – rather than on abstract principles. It is asymmetrical – it gives different powers to the regions based on their ability to perform, rather than on principled equality that does not correspond to the varying capacities of spheres. There is no prescriptive legislation and too many formal structures to regulate relations, but rather agreements between sectors, which evolve into practical arrangements. There is concern with feasibility – there is no setting-up of hollow mechanisms that are being filled with content later on.

In the discussion that followed, a number of themes were raised from the floor. Some of the key threads were as follows.

Capacity

Questions were raised about how effective the budgetary process has been, and what is the capacity of government to manage finances, train people, and get them involved in the process. To ensure that people get involved and become interested in building their own capacity, they need to be motivated by a coherent vision, though Premier Matsepe-Casaburry commented that such visions is difficult to develop given provincial disparities. The need for performance indicators was pointed out as well.

Budget process

MEC Miller from KwaZulu-Natal commended the financial component of IGR as being clear, successful and in line with the constitution. The budgeting process is more equitable and there are fewer unfunded mandates. Although provincial taxation powers are not sorted out yet, provinces are entitled to their share of national resources by right.

The division of the budget according to the 85%-15% formula was questioned as interfering with the need to deal with infrastructural backlogs in areas other than health, education, and welfare.

Asymmetry

Asymmetrical devolution of power could lead to uneven development, and increase the already wide gaps between provinces. Provinces that lack capacity need assistance from the national sphere, though national government itself does not always have the capacity. The enormous differences between provinces must be considered when equitable share is allocated to them.

After points were made from the floor, the presenters were given an opportunity to respond.

Mr Momoniat explained that the equitable share formula takes into consideration backlogs, uneven resources and poverty. The formula allocated money to the provinces as a bulk sum, and the provinces can decide how to allocate the money to different areas. The 85%-15% formula applied to sectors (health, education, welfare), and the relevant departments can decide on how

to distribute it internally (between personnel, services, infrastructure). The system is evolving and the challenge is to learn from experience and adjust. Putting in place a good information system is essential to enable sound decisions.

Professor Levy clarified that Local government would feature in the audit, though there are not many IGR institutions in this sphere, and it is complicated. the question of absorptive capacity to deal with reform is important – too many reforms implemented too quickly can result in destabilisation. There is need to deal with different interpretation of ‘concurrent’ powers, and workshop the findings of the audit with all stakeholders to instil a sense of ownership of the process and the results.

Mr Morobe pointed out that equitable share is not the same as overall equity. The FFC formula is a tool in moving towards greater equity than in the past. It is meant to give provinces an allocation that is based on a certain understanding of their needs, but they have the freedom to use the allocation as they choose (within limits). Conditional grants allow national government to advance certain policy objectives, though provincial governments can affect decisions within this framework.

FIRST SESSION, 30/3/1999

Mr Titus, Department of Constitutional Development, “perspectives on the present state of provincial governance”

Mr Titus stressed the need to implement co-operative governance. He emphasised the importance of moving beyond sectional and local interests and working towards national interests.

A number of challenges facing IGR were identified. These included finding alternative service delivery modes, maintaining infrastructure, developing human resource capacity, dealing with personnel costs and budgets, responding to provincial reports in a co-ordinated manner, and putting in place adequate monitoring and supervising mechanisms.

Monitoring and supervising mechanisms should allow us to look at the relations between policy goals and performance. Indicators for monitoring should be developed jointly by national and provincial governments, be transparent, agreed upon, be either formal or informal, and be piloted before being implemented.

Overall, provinces have performed well considering the problems they have had to face. Questions about the present state of provincial government, whether provinces are doing what was planned and were these original plans feasible or do they need to be revised, have to be addressed.

Mr Gordhan, “provincial powers and good governance”

Mr Gordhan questioned whether provincial government has been used effectively to achieve good governance. The current system of government was designed to enhance cohesion and unity, maximise co-operation and minimise conflict, bring government closer to the people, ensure effective provincial powers to make a difference on the ground, recognise the role of local government and extent democracy across all spheres.

Criteria for achieving good governance included making a difference on the ground, efficient management of all resources, ensuring effective services, instilling a developmental ethic, contributing towards nation building, reducing tension and conflict, promoting the development of a democratic political and civic culture and developing local government.

In order to assess if provincial powers have been used to achieve good governance the post-1994 period must be divided into two. The first two and a half years were a learning experience characterised by clarifying powers and identifying areas where these powers were to be exercised. The second two and a half year period was characterised by greater stability, rationalisation of structures, improving financial management, developing greater capacity, and making the provincial voice more effective within the NCOP. All in all a better provincial system was developed during this period.

The challenges for the future are to ensure efficient delivery and give greater content and meaning to co-operative governance. Resources at different spheres should be co-ordinated to avoid duplication. Provinces should make better and greater use of their legislative powers, which may include the powers of taxation as well.

Premier Ramathlodi, Northern Province

MINMECs diminished the powers of provincial government since decisions made within these structures often become binding on the provinces without their involvement. To avoid this MECs should be mandated before attending these meetings and not take decisions that are binding on the province without proper consultation.

By building capacity at local government, provinces will be able to focus on other areas like policy development and monitoring. The incorporation of traditional leaders into local government should be considered as well.

Premier Mtshali, KwaZulu-Natal

The present system of government has reached a crossroad presenting us with an opportunity to evaluate and redefine the role of provincial government. Currently the system is a hybrid of federal and unitary principles, combining the weaknesses of both principles and not doing enough to incorporate their strengths.

Devolution of power to allow greater involvement of the provinces in government is essential. Currently the national sphere dominates through legislation, resource allocation and rules and regulations. Provinces are marginalised, their legislatures lack the power to pass laws, and policy differentiation at provincial level is inhibited. Provinces have become sub-committees of the NCOP, merely implementing national policy. This leaves little room to be innovative and play a role in creatively meeting the specific needs of their constituencies. Operating in this fashion renders provinces ineffective and costly.

Provinces should be given more powers and allowed to differ on policy issues. Power and capacity should be decentralised to regional and district levels and guided and monitored by the provinces, taking into account differing policy positions. This would ensure that provinces are not caught between national and local government. Unity in diversity is essential and the best route towards good governance.

Premier Molefe, North West

The legacy of the past has made the combination of unitary and federal systems of government a necessity. Although provincial governments have their own views they should be encouraged to work in consensus to deliver services and alleviate poverty. Responsibilities within the three spheres of government overlap, but the powers of each sphere are not derived from national government, and national government has limited authority to override these powers. In this context provincial governments are the main implementers of service delivery with policy-making powers in specific areas.

Good governance is a process that brings together antagonistic forces with similar aims. It is the ability to deliver services to diverse constituencies with diverse interests, through interaction and engagement and the use of legislative capacity and mediation of various interests.

There is a need for decentralisation and accountability in the area of service delivery. There should be a move away from controlling society to serving it. Residents at both local and provincial level must be allowed to participate in decision making, to enhance the legitimacy and accountability of the political system.

Co-operative government has been working well despite political differences. In some areas provincial powers are contingent on prior action by national government. This results in provinces not being able to move fast even if they have the capacity to do so, and they have to wait for national legislation. The provinces may be subject to negative public perception when delivery does not happen even if it is not their fault. National norms and standards should not block provincial initiatives. The role of the NCOP should thus be seen within the context of developing capacity and creating a support system at provincial and local levels.

MEC Marais, Western Cape

MEC Marais emphasised that fear of domination undermined the ideals of intergovernmental co-operation. Diversity within shared values must be recognised. The powers of the provinces are limited as the constitution is too centralist. The emphasis on uniformity does not allow for the consideration of uniqueness of the different populations and concerns.

MINMECs should be abolished in favour of inter-provincial forums. This would allow for the expression of real provincial viewpoints. This does not happen within the NCOP, because all delegates to the NCOP vote according to mandates from their political parties.

The focus of IGR should be on asymmetry and subsidiarity, taking into consideration the province's capacity to exercise powers and develop cross-province alliances. National control is not efficient, but provinces should have extended powers to help local government and neighbouring provinces where they can.

Discussion

Powers of provinces and premiers

One of the issues raised from the floor highlighted different perceptions of the extent of provincial powers. Some speakers claimed that provinces did not have sufficient power while others felt that these powers were too extensive.

According to Mr Lekota provinces have considerable powers to legislate through the NCOP but often do not make use of this facility. He also made the point that delegates to the NCOP should get their mandates from the provincial legislature and not from their political parties, as there are issues that affect the province as a whole and not just the political party. In response, MEC Marais said that only minor amendments to bills occur through the NCOP, and no substantial changes.

Premier Ramathlodi made the point that the role of the premiers' forum should be extended, and Mr Gordhan suggested that the forum should agree on the criteria to evaluate good governance, and the performance of provinces will be measured accordingly.

There are difficulties in clearly differentiating provincial versus national powers and a need was expressed for more clarity in this regard. However, both Mr. Gordhan and Premier Molefe suggested that given that the system is new, it should be allowed to develop, and that the lessons of its experience should be studied before rushing to formulate legislation in the field of IGR.

Unfunded mandates and norms and standards

Policies, norms and standards are often set at national level without careful consideration of their budgetary implications. Provinces are then faced with unfunded mandates. National norms and

standards should not be finalised without proper consultation with the provinces. It was felt that this would go a long way in reducing the problem of unfunded mandates.

There was a suggestion that norms and standards not be legislated. Premier Ramathlodi asserted that although regional differentiation is a fact, there is a need for national norms and standards. These national norms and standards should allow for provincial flexibility and initiative, however.

Capacity

The issue of capacity was discussed in relation to financial management. It was stressed that the MTEF be implemented only once sufficient capacity existed. Premier Mtshali reiterated this point by adding that capacity building and allocation of resources are crucial.

Efficiency versus effectiveness

The issue of cost effectiveness and efficient service delivery within the context of the present system was raised. There was a suggestion that each area of delivery be examined separately to establish whether the national or provincial sphere has more capacity to deliver. Concern was also expressed that financial management that sticks rigidly to fiscal targets could compromise social delivery.

SECOND SESSION, 30/3/1999

Dr Ncholo, Department of Public Service and Administration, “provincial capacity and service delivery”

Public service delivery has to a large extent been successful in spite of the problems inherited from the previous administration. The constitution mandates an efficient public service, which is currently in the process of being transformed. This transformation of the public service falls within the terrain of national government.

The emphasis on compliance to rules needs to be shifted to a focus on delivery. The public service should strive to deliver in an efficient and transparent manner. The importance of this was stressed since the public service is the interface between government and the public.

Standards need to be stated clearly and adhered to, taking into account financial, human and organisational constraints. In addition there is a need to institute mechanisms for redress and accountability. The public service administration does not see a need to give more powers to the provinces but rather to address capacity and will to perform. A performance management system based on clear identification of goals, capacity, budget and planning should be put in place.

Mr Mokgoro, North West, “provincial capacity and serviced”

The lack of action in spite of the plethora of policies has highlighted the need to focus on operationalising these policies. This is dependent on leadership having the capacity to exercise their power wisely. Wisdom, derived from experience, is in short supply, often leading to abuse of power and coercion of subservient officials. There is often willingness to transform, but often this is not accompanied by the ability to make this transformation.

Mr Gross, Scientific Institute for Democracy, “a new political culture as a source of good governance in the provinces”

Mr Gross’s input on the Swiss experience illustrated how a federal state can unify rather than divide. The federal system was used to help the provinces or cantons stay together and at the same time maintain their diversity. The two-chamber system ensures that citizens as well as cantons have an equal stake and say in government. Laws must be ratified by a majority in both chambers.

Switzerland’s use of referendums encourages on-going political debate and exchanges. This results in a more representative government since citizens are encouraged to speak and government to listen. The endorsement of people’s willingness to discuss their differences leads to further integration. This also leads to the civilisation of conflict and it discourages the use of violence.

It was suggested that IGR be thought of in the context of relations between citizens, where the state is only one actor among others. The Swiss experience shows that unity and diversity are not necessarily contradictory and that often diversity can strengthen and unify.

Discussion***Co-operative interrelations***

The implications of a more political intervention into administration, and vice versa, were raised in the discussion. The blurred interface between senior officials and politicians had led to the resignation of a number of DGs. Dr Ncholo responded by saying that in South Africa there is no distinction between senior politicians and administrators in terms of their responsibilities for policy making.

Capacity

A suggestion was put forward to co-ordinate better capacity and resources that are sometimes available but not always utilised. This highlighted the need for the notion of ‘capacity’ to be unpacked, formulated, implemented and managed more effectively.

A contradictory position put forward from the floor was that one of the threats facing the public service was the lack of capacity to handle transformation. This was especially the case with

regard to the application of affirmative action. It is therefore important to empower people and provide them with an enabling environment where they can learn from their mistakes.

MEC Moleketi, Gauteng, “financial and infrastructural backlogs”

Infra-structural backlogs should be financed from the regular operational budget of departments, within the limits of sound fiscal policies. There is no separate budget for this investment and it should become a regular component in each department’s budget. This is difficult given the high proportion of the budget that is spent on personnel costs.

Although there is no specific provision for dealing with backlogs in the provincial allocation, preference is given to more rural provinces, as the extent of ‘ruralness’ is used as a proxy for needs. This favours some provinces regardless of the actual backlogs, and urban provinces like Gauteng suffer as a result. The actual backlogs in each province should be used rather.

Creative solutions to the question of funding infra-structural backlogs must be found, through using the provincial allocation, conditional grants, partnerships with the private sector and other arrangements (user fees, sale and leaseback of state assets, etc.)

Professor Steytler, Wits University, “Section 139 and 100 interventions”

Professor Steytler’s paper focused on the provisions made in Sections 100 and 139 of the constitution for circumstances in which national government can intervene in the affairs of provincial government, and a provincial government can intervene in the affairs of a local government. It is essential that these powers be carefully looked at and procedures clarified and developed in consultation with provinces.

National government’s right to intervene should be used cautiously and be seen as a corrective measure seeking to cure. Intervention should be temporary, supportive and must be reviewed by the NCOP. The affected province should be included in this process, bearing in mind that the goal of intervention is to harmonise the relations between provincial and national spheres of government. The NCOP, in addition to reviewing the intervention, bears the responsibility of determining who would pay for the cost of the intervention. In most instances this will depend on the nature of the conflict. The NCOP also has the power to set aside the intervention if it disapproves of it.

Discussion

Need for guidelines

A representative from the NCOP argued that even though the ability to meet its obligations depended on a local government’s capacity, there is need for a set of guidelines to evaluate the performance of municipalities. The absence of these guidelines makes it difficult to distinguish between the legislative and executive functions of the municipalities, thus creating vague

conditions for intervention. In addition, there was a call for guidelines on how to operate in cases of intervention.

According to Professor Steytler the constitutional obligations of local government need to be clarified and defined. Furthermore, he argued that there should be a uniform set of standards for intervention.

Capacity and timeframe

The issue of timeframes set in Section 139 was raised by a representative from the NCOP. A point put forward was that the period of 30 days allocated for responding to problems was too short. In addition, the limited capacity within the NCOP to deal with problems created further pressure. Professor Steytler responded by saying that timeframes for intervention depended on when a complaint was registered. He agreed that timeframes and the rules for review set clearly.

Developing capacity was further identified in the context of intervention. There was a suggestion by SALGA that since the cost of remedial action is high, capacity building should accompany any form of remedial action in the hope that the same problems do not recur.

There was a suggestion to invest in training and that this should be made compulsory. Finance management and personnel issues in particular should be addressed in this type of training, thus reducing the incidence of resignation at senior level. The Gauteng MEC for finance agreed that there was a need to develop the capacity of senior management and office bearers.

Overspending and backlogs

The Free State MEC for finance argued that provinces often overspend due to debts inherited from the previous administration and also because of having to deal with backlogs and incorrect baseline figures. The over expenditure results in provinces having to call on national government to intervene. Mr Moleketi, the Gauteng MEC for finance, reported that the current baseline figures are more accurate. He added that although banks have reacted to the statements made by government that national government will no longer bail out provincial government, the provinces are in a position to make alternative arrangements.

Delivery and infrastructure

The question was posed whether the problem of backlogs was not compounded by the separation of infrastructure from social service delivery. MEC Moleketi responded by saying that delivery and infrastructure are related and that provinces can prioritise infrastructure in areas of delivery such as health, education and welfare. This means increasing capital expenditure at the expense of operational expenditure, for example cutting on items such as drugs, etc.

Minister Moosa, Department of Constitutional Development, concluding remarks

Minister Moosa delivered the closing address at the conference. He emphasised that few provincial or national departments had the capacity to run affairs at lower levels, and that the NCOP should therefore be seen in this context. He stressed that most interventions are based on co-operation and that intervention cannot be successful if provinces do not want it.

IGR and co-operative governance are mechanisms set out by the constitution to achieve equity, to promote the RDP, nation building, and unification. The objective of the conference is to put forward a policy on the matters discussed, for example guidelines for NCOP interventions and so on. Furthermore, this policy will inform a new way forward for IGR structures

The Minister acknowledged that the role of the NCOP was limited, especially in relation to legislation since the NCOP was the last stage in discussing legislation. He questioned whether this should be changed. There seemed to be a general agreement that there was no need to rush into legislation but rather continue relying on emerging convention based on consensus.

The Minister suggested that the relationship between MINMECs and provincial cabinets could improve if the cycle within which they operated changed. MINMECs should not take decisions that would have financial implications for provinces. Although the DCD was not in charge of provinces, the possibility that the DCD monitor, co-ordinate and build capacity at provincial level should be explored.

The Minister concluded by saying that the relations between senior officials in both the national and provincial spheres should be looked at to improve the overall functioning of the IGR system.